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Supreme Court of the United States

OCTOBER TERM, 1949

No.....

ANNIE MARY TIMMONS, PETITIONER,

versus

J. D. FAGAN, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA, AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petition of Annie Mary Timmons respectfully shows to the Court:

A. SUMMARY STATEMENT OF MATTER INVOLVED.

This is a petition for a writ of certiorari directed to the Supreme Court of South Carolina to review a judgment of that Court filed on July 29, 1949. This suit by J. D. Fagan against A. M. Timmons was begun about the 10th of February, 1946 by the service of summons and complaint and had for its purpose the recovery of actual and punitive damages for an alleged trespass to real and personal property alleged to have been committed by the defendant. (R. 1.)

The complaint alleged that the plaintiff rented a furnished apartment beginning December 16, 1945 and ending February 10, 1946 at a specified rental; that the defendant, her agents, and servants entered the apartment in his absence and removed the furniture therefrom, piling his personal belongings on the floor; that this was done by or at the instigation of the defendant, A. M. Timmons, because of plaintiff's refusal to pay black-market prices; that removal of furniture rendered plaintiff's dwelling useless to him and injured him in the amount of $5,000.00. (R. 1-5.)

The answer denied all of the material allegations and specifically alleged that the defendant had rented to the plaintiff an unfurnished apartment for a period of eight weeks (December 16, 1945-February 10, 1946), the rental of which was paid in advance; that she had no furnished apartments for rent and owned no furniture at that time; that at the time the plaintiff leased the premises in question, it was definitely agreed after a two-hour discussion of the terms of the contract signed by both plaintiff and defendant that the plaintiff would give the defendant three days notice prior to the expiration of his lease as to whether he desired the premises in question for an additional period

of time and that no such notice was ever given by the plaintiff to the defendant; that the defendant was informed and believed that the plaintiff rented from some other party the furniture placed in the unfurnished apartment; that the defendant denied that she or her servants or agents removed the plaintiff's furniture or possessions; that plaintiff rented the unfurnished apartment from the defendant for a period of eight weeks; that after the 10th of February, 1946 the plaintiff had no further right thereto and this defendant was entitled to possession of her unfurnished apartment; that the plaintiff continued to remain in possession thereof until the 21st day of February, 1946 and perhaps longer without the payment of any rental therefor; and that the defendant specifically denied that the plaintiff had been damaged to any extent or in any manner by reason of any acts or things that this defendant had done. (R. 5-7.)

The case was first tried before Honorable J. C. Long, Special Judge, and a jury at the November term of the Court of Comon Pleas for Richland County and resulted in the Trial Judge granting appellant's motion for non-suit at the conclusion of all the respondent's testimony. (R. 2.)

Thereafter, upon motion for a new trial, his Honor reversed his ruling and granted motion for a new trial April 9, 1947. The case was then tried before Honorable J. Henry Johnson, presiding Judge, and a jury, March 22, 1948. (R. 6.)

Upon the trial of the case the plaintiff put up three witnesses including himself to prove the alleged trespass. The first witness, A. M. Rickman of the Columbia O. P. A. office, who was not questioned about the alleged trespass but purely on matters not before the Court, testified that the apartment in question was first registered in 1942 as a partly furnished apartment at a rental of $50.00 per

month; that orders were issued by the Rent Office in 1945 putting the apartment on a strictly unfurnished basis at a rental of $30.00 per month, thereby making it impossible for the defendant to rent a furnished apartment from this defendant without further orders from the Rent Office. (R. 26.)

The plaintiff and his wife, both interested witnesses, testified that plaintiff rented a furnished apartment from the defendant for a period of eight weeks which expired February 10, 1946 (R. 31-34, 94-95); that on February 19, 1946 upon their return to the apartment about 7 o'clock they found the furniture missing and their personal belongings on the floor (R. 58, 59); plaintiff testified that the key to the apartment had never been out of his possession (in fact that he still had the key at the time of the trial) (R. 85, 86); that when the plaintiff locked his own key inside the apartment or lost his key one night he was unable to borrow one from the landlady (R. 82); that even though upon renting the apartment he had secured a receipt clearly stating that his lease on his apartment extended from December 16, 1945 through February 10, 1946, some days later he demanded and secured a duplicate receipt clearly stating that the lease on his apartment extended from December 16, 1945 through February 10, 1946 (R. 36-38, 72); that he told an untruth concerning his first receipt but held the Rent Office responsible for his lie (R. 73, 74); that he held someone else responsible for his not being able to open the door and enter into the apartment (R. 51). His bride-to-be testified that she was present with her fiancee on the night he rented the apartment (R. 95-97).

The defendant, since no testimony had been presented to connect her with any trespass, here made a motion for a non-suit, which motion was overruled. (R. 115-117.)

The defendant testified that the plaintiff entered into and signed a definite contract. This contract was in the hands of the Federal Court here and could not be obtained for the trial. Its specific terms agreed to were: (1) That he would pay $60.00 for eight weeks rent; (2) That he would give notice to the owner three days prior to the end of the period for which plaintiff held a receipt as to whether or not he wished to make a contract for additional time; (3) That if he did not pay the rent for a new period, he would allow anybody sent by the landlady to see his living quarters with the view of renting during the three days prior to the end of his tenancy; (4) That he would vacate on the last day shown by his receipt as paid for taking all his personal possessions that he wanted with him and leaving the premises clean; (5) That the apartment was the O.P.A. ceiling price and was rented unfurnished only; (6) That he had no rights in the apartment one hour after the day for which he had paid stating specifically, "I hereby agreed that it is none of my business what goes on in the rooms that I have been renting—whether it is repair, carpenter work, etc., or anything else during the first hour and thereafter following the close of the last day's rent for which I hold a receipt"; (7) That if he remained in living quarters after the last day for which he held the receipt that he would be guilty of breach of contract; that even though the defendant begged plaintiff not to rent apartment on Sunday night but to wait until office hours Monday, plaintiff would not leave without definitely renting apartment and signing a lease for eight weeks (December 16, 1945-February 10, 1946) for the unfurnished apartment at the price of $60.00 (R. 118-120); that he broke his contract by not giving a three-day notice as to whether he wished to remain an additional period, by not paying any rent at all for the term beginning February 11, 1946, by not returning the key and getting his $4.00 deposit as

he promised to do in a separate agreement, by "holding over" in the apartment indefinitely (according to his own testimony from February 10, 1946 through February 21, 1946, and actually nobody knows how much longer he stayed as he slipped out without notice) after he had established the time limit by contract and by two receipts; that the case plaintiff put in the County Court prior to this term concerning this same contract was settled by Senator McLeod, attorney, by payment of $125.00 because defendant had been very ill as the result of a major operation in a Charlotte, N. C. hospital and was not able to go through any kind of Court procedure or be worried by delays, etc. (R. 148-150); and finally that defendant, trusting that plaintiff would pay his rent before he left, allowed him to remain at his convenience without interference and had no thought of sending him a magistrate's notice (which would have removed him quickly). (R. 142.)

It is to be remembered that even though the plaintiff lived in an apartment building with many other families—a number of them right on the same floor with him—, he could not produce one disinterested witness. Only he and his wife, both of whom misrepresented the truth, offered testimony to prove the alleged trespass. Respondent testified he had lost his receipt and later admitted he had spoken an untruth. He also stated that he had lost his key and later changed his story. His wife suffered the illusion that she was present on the night he rented the apartment. Two witnesses proved that neither she nor anyone else was with Respondent the night he rented.

Mrs. C. L. Fugate, a witness for the defendant, testified that she owned the furniture and rented same to the plaintiff (approving on the Monday the tentative arrangement insisted upon by the plaintiff on Sunday night) (R. 152); that plaintiff never offered her one penny of rent

for any period after February 10, 1946, nor did he notify her that he wanted to rent one single piece of furniture following the termination of the lease ending February 10, 1946 (he could have dropped by her desk any day and made arrangements on the furniture if he had wanted to rent it again), that she constantly transferred various pieces of furniture from vacant rooms and apartments to occupied rooms and apartments as the need arose—which occurred nearly every day of the year—scheduling such transfers in accordance with records of arrivals and departures of guests who rented from her (R. 158-159); that each piece of furniture was rented separately at a set price for a specified length of time (R. 156-159); that some tenants didn't rent any, others rented one piece and still others went the limit on the amount and quality of the furniture rented (R. 157-158); that Fagan went the limit on the quality and amount he rented (R. 162); that the furniture Fagan used was placed in other apartments since Fagan did not fulfill his contract nor make any effort to let any one know that he wished to use the furniture further nor pay for the furniture for an additional period of time (R. 166-167); that she, having access to the furniture she owned when she moved it in and until she moved it out of any place, removed the furniture therefrom on the day in question without mentioning or discussing the matter with the defendant (R. 171); that she had at different times purchased various pieces of furniture from a number of business concerns in Columbia. (R. 197-201.)

Mr. G. T. Saunders testified that he heard the plaintiff discuss the leasing of the apartment and that the apartment was leased to the plaintiff as an unfurnished apartment by the defendant; that he heard the defendant explain to the plaintiff that it would be necessary for him to rent any furniture he wanted from some other party; and furthermore, that neither Mr. Fagan's bride-to-be nor any

other person was with him on Sunday evening, December 16, 1945, when he rented the unfurnished apartment. (R. 206.)

The defendant moved for a direct verdict on the same grounds as for a non-suit and on the additional grounds that the evidence conclusively showed that if any trespass was committed, it had to be committed by some one other than the defendant. (R. 207.) The trial resulted in a verdict for the plaintiff against the defendant of $500.00 actual damages and $250.00 punitive damages. (R. 6.) The defendant moved for a judgment *non obstante verdicto* the Court overruled the motion. (R. 208-210.) Notice of appeal was given. (R. 211.) Five exceptions were taken to this ruling. (R. 212-215.)

The State Supreme Court in an opinion No. 16233 filed June 27, 1949 upheld the trial Judge in submitting the case to the jury. After consideration of only a few loose bits of testimony favoring respondent and without any legal decision of any sort to support the conclusion reached. A month later on July 29, 1949, the State Court denied a petition by appellant for a rehearing and substituted another paragraph for the one and only paragraph expressing their conclusions of June 27, 1949.

B. BASIS OF THE COURT'S JURISDICTION.

It is competent for this Court to require by certiorari that this case be certified to it for determination pursuant to Act of June 25, 1948, C. 646, Sec. 39, 62 Stat. 992, eff. Sept. 1, 1948, Section 1257, Title 28, United States Code.

C. QUESTIONS PRESENTED.

(1) Did not the Honorable State Court err in its conclusion as a whole which states: "While the evidence con-

necting the appellant with this trespass was entirely circumstantial, as against positive evidence to the contrary, yet carefully weighing all of the evidence, we have reached the conclusion that a reasonable inference could be drawn therefrom that the appellant not only instigated the trespass and co-operated therein, but that the party who actually committed the trespass was the agent of the appellant, and that it was therefore the duty of the trial Judge to submit the case to the jury," the error being that there was no relevant, competent testimony to support such finding and to affirm the judgment of the Lower Court upon such ground is to deny the petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution?

(2) Did not the Honorable State Court err in holding specifically that there a "trespass" committed against the respondent, the error being that it was impossible for this petitioner to encroach on rights conceded to the respondent when those rights had become non-existent by virtue of a breached contract prior to the action, and for the State Court to uphold the trial Judge in refusing petitioner's motion for non-suit and submitting the case to the jury without any real competent and relevant evidence is to deny this petitioner the equal protection of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

(3) Did not the Honorable State Court err in holding specifically as follows: "While the evidence connecting the appellant with this trespass was entirely circumstantial—it was the duty of the trial Judge to submit the case to the jury", the error being that there was no trespass—the rights claimed to have been invaded having been forfeited by breach of contract—and for the Court to uphold the trial Judge in submitting the case to the jury and refusing

the petitioner's motion for directed verdict without any relevant evidence but only that termed "entirely circumstantial" concerning a trespass that didn't even exist is to deny this petitioner of the equal protection of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

(4) Did not the Honorable State Court err in holding specifically "that a reasonable inference could be drawn therefrom that the appellant instigated the trespass," the error being that it was impossible for the appellant to have instigated the alleged trespass because said trespass was actually not even in existence by virtue of the fact that the rights claimed to have been infringed upon were forfeited by breach of contract prior to this time, and for the Court to uphold the trial Judge in submitting the case to the jury and refusing to grant motions for directed verdict and *non-obstante veredicto* on a mere inference (without the slightest trace of competent, relevant evidence upon which to base it that the appellant instigated a trespass which didn't even exist is to deny this petitioner of the equal protection of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

(5) Did not the Honorable State Court err in holding specifically "a reasonable inference" could be drawn that the appellant "cooperated" in the alleged trespass, the error being that the appellant could not possible have cooperated in a trespass-since the rights claimed to have been infringed upon had been forfeited prior to this time by breach of contract—and for the Court to uphold the trial Judge in submitting the case to the jury and refusing motions for directed verdict and *non-obstante veredicto* on a mere "inference" (without one iota of real evidence) that the petitioner "cooperated" in a trespass that hadn't happened is to deprive this petitioner of the equal protection

of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

(6) Did not the State Court err in holding "the party who actually committed the trespass was the agent of the appellant" the error being that there was no trespass committed (except by respondent himself—the rights claimed to have been invaded having been forfeited by breach of contract) and that there was no testimony to connect the petitioner with any act alleged to be trespass; and for the State Court to uphold the trial Judge in refusing motions for directed verdict and *non-obstante veredicto* upon such ground wholly without evidence is to deny petitioner of the equal protection of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

(7) Did not the Honorable State Court err in holding as follows: "yet carefully weighing all the evidence, we have reached the conclusion that—it was the duty of the trial Judge to submit the case to the jury", the error being that the sum total of all the evidence could not create a trespass (the rights claimed to have been encroached upon had been forfeited by breach of contract prior to this time) there being not one scintilla of evidence in the case from which a reasonable inference could be drawn that the appellant had even the remotest connection with the removal of furniture, the so-called trespass (Mrs. C. L. Fugate, the owner of the furniture, testified that she removed the furniture according to her contract explaining in detail her reason for so doing), (R. 166), and for the Court to uphold the trial Judge in submitting the case to the jury and refusing motions for directed verdict and *non-obstanto veredicto* as a result of the way it carefully weighed the evidence surrounding an alleged trespass that couldn't happen is to deny this petitioner of the equal protection of the laws guaranteed her by the Fourteenth Amendment to the United States Constitution?

D. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I

With respect to question (1) presented by this petitioner it is a matter of extreme importance to all citizens of the United States that this Honorable Court protect them in their right to equal protection under the laws and see that that right accorded them by the Fourteenth Amendment to the United States Constitution is not usurped by the State Courts of this country.

In this decision the South Carolina Supreme Court has affirmed a judgment given without any relevant, competent testimony to support same. By so doing the State Court has decided a question of local law in a manner in conflict with the applicable decisions of this Honorable Court and has departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervision. In the case of *Lavender v. Kurn et al.*, 327 U. S., 645, 653, 663 S. Ct., 740, this Honorable Court laid down the rule concerning absence of evidence thus: "Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear." The testimony contains absolutely no probative facts to support the conclusion reached.

The State Court decided this case in conflict with applicable local decisions. In the case of *Holland v. Hardwood Lumber Company*, 214 S. C., 195, 51 S. E. 2nd, 744, this Court reversed the judgment for the claimant upon the ground that there was no relevant, competent evidence to support the judgment of the Lower Court.

II

With respect to question (2) the State Court by ruling

that there has been a trespass committed by the petitioner against the respondent without any real evidence whatever to support the claim (based on an act committed by someone else in the carrying out of her contractural rights to "acquire, enjoy, dispose of property" accorded her by the Fourteenth Amendment) has denied this petitioner of her right to equal protection under the laws guaranteed her by the Fourteenth Amendment to the United States Constitution.

By holding that this was a trespass by the petitioner, the Court has proclaimed that the making of contracts and agreements which governs all human relationships does not have its respect and protection. If a contract between two people is breached by one of them, the other should be protected by the Court from further damage by the one who breached it and should be aided by the Court, if desired, to completely recover damages caused by the breach. The State Court totally disregarded contractual and other rights guaranteed to all by the Fourteenth Amendment to the United States Constitution.

III

With respect to question (3) the State Court upholds the trial Judge in submitting the case to the jury by weakly stating that the appellant is connected with this trespass by evidence "entirely circumstantial". In rendering a decision on this question on the basis of purely circumstantial evidence, the State Court has made a decision in conflict with applicable local decision and probably in conflict with the applicable ruling of this Honorable Court.

In the case of *Holland et al.*, 214 S. C., 195, 51 S. E. 2nd, 744 the State Court held that in order for circumstantial evidence to be sufficient to warrant a finding of facts, the circumstances must lead to such conclusions with reasonable certainties and must have sufficient probative

value to constitute a basis for a legal inference and not for mere speculation or conjecture. The opinion is quoted as follows: "It will be noted that the case of the claimant depends altogether on circumstantial evidence as opposed to the direct evidence, herein referred to, precisely on the point that Gregg and not Holland was employed to handle the truck on its trip to Mississippi, and that Mr. Cheatham who alone had authority to enter into such an agreement, not only did not authorize Holland to accompany Gregg, but did not even know that he had gone on the truck until he heard of his death".

"From a careful consideration of the evidence in the case, we think that the direct testimony of Mr. Cheatham, the manager of the lumber company with reference to the employment of Carl Gregg to drive the company's truck, corroborated by Clark cannot arbitrarily be disregarded. It is not inconsistent with the other circumstances of the case, and outweighs the circumstantial evidence upon which the claimants placed their reliance."

In the instant case whatever weight that speculation, conjecture and surmise might have concerning the alleged trespass is overwhelmingly outweighed by positive, direct, and corroborated testimony that the petitioner committed no act of trespass, that the act of removing the furniture was done by some other party in accordance with her contract with the respondent. Therefore, it is imperative that this Honorable Court review the case and ascertain whether or not the State Court has made a prejudicial decision in conflict with its other decisions and in conflict with the applicable ruling of this Honorable Court.

IV

With respect to question (4) it is respectfully submitted that the petitioner could not have possibly insti-

gated a trespass which did not exist (due to the fact that respondent's contract was definitely ended and not renewed) and that there was no evidence from which an inference could be drawn that this petitioner was instrumental in instigating the removal of the furniture, which act was admittedly done by the owner of the furniture for contractual reasons. The State Court decided this issue in conflict with applicable local decisions.

The facts in the case of *Craig v. Clearwater Mfg. Co.*, 189 S. C., 176, 200 S. E., 765, in which the State Court reversed the judgment of the Lower Court for refusing to direct a verdict for the defendant, are analogous to the facts of this case. The Court quoted from *Baker v. Western Union Telegraph Co.*, 81 S. C., 174, 69 S. E., 151, as follows: "When no reasonable man could fail to come to the conclusion that the presumption (inference) had been destroyed, and that there is no other evidence of negligence, then it would not only be within the power of the Court, but its duty, to order a non-suit or direct a verdict for the defendant." The State Court based its decision upon a presumption that the petitioner instigated the trespass which presumption was based on the presumption that petitioner wanted respondent out of the building. The direct, uncontradicted testimony of the petitioner that she did not instigate any trespass and the uncontradicted testimony of the owner of the furniture that she removed the furniture for a specific reason would certainly destroy any intangible inference that might have cropped up through prejudice or any other way. In the decision of the case, the Court has departed far from the accepted and usual course of judicial proceedings.

V

With respect to question (5) it is respectfully submitted that no trespass was possible against the respondent

whose contract was already breached and ended, and there was no evidence from which a presumption could be drawn that the petitioner cooperated in the act of the removal of the furniture, this act having admittedly been committed by the owner of the furniture. The State Court based its decision upon a presumption that the petitioner cooperated in the act of removing the furniture, which presumption was based upon the presumption that the petitioner instigated the alleged trespass, which presumption was based upon the presumption that the petitioner wanted the respondent out of the building. This is in conflict with applicable decisions of the State Court and has so far departed from the usual course of judicial proceedings as to call for exercise of supervision by this Honorable Court.

VI

In holding that the alleged trespass was committed by an agent of the petitioner without one iota of evidence that the petitioner had any such agent or had any connection with the performance of this act is denying this petitioner of the equal protection of the laws accorded her by the Fourteenth Amendment to the United States Constitution and is in conflict with local applicable opinions.

For instance, in the case of *Craig v. Clearwater Mfg. Co.*, the trucks licensed in the name of Clearwater Mfg. Co., were presumed to be the property of the defendant. Then came the presumption that the drivers of the truck were agents of the owners. The Court in holding that a presumption could not be based upon a presumption, said: "The following extract from 10 R. C. L., 870, Sec. 13, is apt, in considering the question involved in our case: 'It is a well-established rule that a presumption can be legally indulged only when the facts from which the presumption arises are proved by direct evidence, and that one presump-

tion cannot be deducted from another. To hold that a fact inferred or presumed at once becomes an established fact, for the purpose of serving as a basis for a further reference or presumption would be to spin out the chain of presumption into the region of the barest conjecture."

"So, in the present case, even if the plaintiff were justified in presuming that the truck was the property of Clearwater Mfg. Co., because they bore the license plate of the State Highway Dept., in that name, she would not be justified in presuming that the drivers of the truck were the agents and servants of the said company, and were engaged in its business and so engaged within the scope of their duty. This would be piling the presumption of Pelion upon the presumption of Ossa."

The decision of the State Court departed far from the accepted course of judicial proceedings as it was based—without one jot of evidence to support it—upon the presumption that petitioner had an agent to remove the furniture, which presumption was based upon the presumption that the petitioner fully cooperated in the act, which presumption was based upon the presumption that the petitioner's motive was to remove respondent from the premises.

VII

With respect to question (7) it is respectfully submitted that the respondent has failed completely to produce a scintilla of evidence from which it could be reasonably inferred that the petitioner committed the trespass. The State Court erred seriously in overruling petitioner's motions for non-suit, directed verdict, and judgment *non-obstante veredicto* and so far departed from the usual course of judicial proceedings as to call for an exercise of supervision on the part of this Honorable Court.

The State Court has also decided this case in a manner in conflict with local applicable decisions "The Court states in the case of *Taylor v. Atlantic Coast Line Railway Co.*, 78 S. C., 552, 556, 59 S. E., 641, 643, 'A scintilla of evidence is any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror.'

"Whilst adhering to the scintilla rule, this Court has recognized a rule supplemental to the scintilla rule, which is thus propounded in the case of *National Bank v. Thomas J. Barrett, Jr., & Co.*, 173 S. C., 1, 174 S. E., 581, 582: 'If it be conceded that there may be deduced by a process of an unusual finesse of reasoning that there is a scintilla of evidence—nevertheless, there is another rule, more founded upon common sense and reason to the effect that when only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the Court and not a question of fact for the jury.'

"This declaration is but to say that the scintilla of evidence upon which a case should be sent to the jury must be real, material, and pertinent and relevant evidence." In the instant case, the plaintiff's evidence falls far short of of the dignity of proof. It perhaps begot suspicion in imaginative minds and there died, leaving prejudice to form the decision. The State Court has failed completely to offer any real, material, pertinent and relevant evidence and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the supervision of the Supreme Court of the United States.

Wherefore, petitioner prays for the allowance of a writ of certiorari to the Supreme Court of South Carolina in order this decision may be reviewed and determined by

this Honorable Court and that this Court reverse the judgment of the State Court.

Respectfully submitted,

ANNIE MARY TIMMONS,
Petitioner.

October ....., 1949.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1949

No. .....

ANNIE MARY TIMMONS, PETITIONER,

versus

J. D. FAGAN, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

REFERENCE TO REPORT OF OPINION BELOW

The opinion of the State Court is reported in 54 S. E. (2d), 536.

GROUNDS OF JURISDICTION

This Court has jurisdiction pursuant to Act of June 25, 1948, C. 646, Sec. 39, 62 Stat., 992, eff. Sept. 1, 1948, Section 1257, Title 28, United States Code.

STATEMENT OF THE CASE

A summary statement of the case is made in the petition under the heading, "A SUMMARY STATEMENT OF THE MATTER INVOLVED" (pages 2-5), permission is prayed to omit same at this point.

ERRORS TO BE URGED

1. The State Court erred in affirming the judgment of the Lower Court by conclusions unsupported by relevant, competent evidence.

2. The State Court erred in upholding the judgment of the Lower Court on the ground that there was a "trespass" committed against the respondent.

3. The State Court erred in upholding the judgment of the Lower Court on the ground that the petitioner was connected with the alleged treaspass on entirely "circumstantial evidence".

4. The State Court erred in upholding the judgment of the Lower Court on the ground that a reasonable inference could be drawn that the appellant "instigated" the trespass.

5. The State Court erred in upholding the judgment of the Lower Court on the ground that a reasonable inference could be drawn that the appellant "cooperated" in the alleged trespass.

6. The State Court erred in upholding the judgment of the Lower Court on the ground that trespass was committed by an "agent" of the petitioner.

7. The State Court erred in upholding the judgment of the Lower Court on the ground that the weight of the evidence justified sending the case to the jury.

SUMMARY OF ARGUMENT

1. In upholding the trial Judge in submitting the case to the jury on the basis of the evidence, the State Court violated the rule laid by this Honorable Court in the case of *Lavender v. Kurn et al.*, 327 U. S., 645, 653, 663 S. Ct., 740 (and in many other cases), which commands reversal of the instant case because of the total absence of probative facts.

2. The State Court in upholding the Lower Court's ruling that a trespass against the respondent was committed completely disregarded the law as laid down in AM JUR, Vol. 32, 778, pp. 918-919. The specific terms of the contract corroborated by two witnesses were broken in every particular by the respondent himself, and he was not trespassed against by anybody.

3. In ruling that the petitioner was connected with the alleged trespass on entirely circumstantial evidence, the State Court failed to realize the fact that there was no trespass but only a breached contract and some furniture moved somewhere. The Court also ignored the testimony which proved that petitioner was kind to and granted some favor to respondent each of the four times she had opportunity to see him during his stay. Therefore, the Court had to create a reaction. The trial Judge should have granted a motion for directed verdict because the whole matter of trespass without any real evidence was a question of law for the Court and not a question of fact for the jury. According to the law in the case, a verdict for damages could not rest on mere speculation (52 AM JUR, 892).

4. In ruling that a reasonable inference could be drawn that the petitioner instigated the trespass, the State Court had to create a motive for the petitioner to instigate the alleged trespass. There was no evidence whatever to estab-

lish such a motive, the facts being that there was no unpleasantness between petitioner and respondent, and the party who committed the act mistaken for trespass did so for her own stated reasons. The respondent injected several untrue statements concerning the petitioner throwing respondent "out in the street" and locking him out of the house in an effort to help create a motive for the petitioner's instigation of the act, the "black-market" rent idea having fallen through because the Rent Director's testimony proved the price to be exactly as ordered. (R. 88-89.)

5. The State Court in holding that a reasonable inference could be drawn that the petitioner cooperated in the alleged trespass ignored the fact that there was no possible motive for the removal of the furniture on the part of the petitioner, nor was there any evidence at all to connect her with the alleged trespass. The testimony proved that she had no key, was not seen near the apartment, was not seen cooperating in the act of removing any furniture, while on the other hand the owner of the furniture testified that she moved the furniture in accordance with her contract.

6. In holding that the alleged trespass was committed by an agent of the petitioner—claiming inference or presumption as a basis for the decision—the State Court is in conflict with local applicable decisions such as *Craig v. Clearwater Mfg. Co.* (referred to in Part IV of this summary) in which case the Court held that a presumption could not be based on a presumption.

7. The State Court was in error when it held that the weight of the evidence justified sending the case to the jury. The State Court made reference to testimony favorable to the respondent scarcely mentioning any testimony favorable to petitioner, failed to present even one legal decision of any sort to support the conclusion reached, and

ignored the fact that respondent had violated the general rule for establishing a case (63 Corpus Juris 1016). The evidence so indisputably proved that the petitioner committed no trespass and that the owner of the furniture removed it according to contractual agreement that it is indeed difficult to understand how the State Court could have possibly sent the case to the jury on the weight of the evidence.

ARGUMENT

The State Court erred in upholding the judgment of the Lower Court on the grounds that: the evidence warranted such action, somebody committed a trespass against the respondent, the petitioner was connected with the trespass by circumstantial evidence, the petitioner instigated the trespass, the petitioner cooperated in the trespass, an agent of the petitioner committed the trespass, and the weight of the evidence justified the decision.

Point I

The State Court in reaching the general conclusion that the case should have gone to the jury, failed to consider the fact that there was no relevant, competent testimony to support such a decision. From the first page of the record to the last not one word can be found to connect the petitioner with any acts of any nature other than renting an unfurnished apartment on December 16, 1945, promising on Sunday night February 10, 1946, to get a locksmith Monday morning to make a key for respondent, checking all apartments in the building from doorways as a result of a telephone request by the furniture owner who was checking the other buildings at the same time to locate a chair of a certain pattern, issuing a duplicate receipt, and stating to respondent that she did not know where the

furniture missed by respondent could be unless the owner of the furniture had come for it.

The State Court certainly did not follow the rule for the weight and sufficiency of evidence necessary to support a cause of action for trespass, which is as follows: "The general rule is that the plaintiff must establish his case by the preponderance of evidence, and with reasonable certainty by the introduction of competent, sufficient, and satisfactory evidence", 63 Corpus Juris 1016.

The respondent has failed completely to offer any real, material, pertinent, and relevant evidence from which it could be reasonably inferred that the petitioner committed the alleged trespass.

Point II

The State Court was in error in ruling that there was a trespass committed against the respondent. The whole issue was not a matter of trespass but a matter of contract signed by the respondent after a two-hour discussion and explanation of its terms on Sunday night, December 16, 1945. Among the terms of the contract signed were the following: $60.00 paid for eight weeks rent beginning December 16, 1945 and ending February 10, 1946; apartment unfurnished at OPA price as proved by registration blank; three-day notice before the end of the eight weeks period as to whether or not a renewed contract or a different one was desired; permission granted for any prospective tenant to see apartment during last three days of contract period; promise to vacate on or before the last day paid for taking with him all personal possessions that he wanted, part of which agreement reads as follows: "I hereby admit and agree that it is none of my business what goes on in the rooms I have been renting—whether it is repair, carpenter work, etc., or anything else—during the first hour and

thereafter following the last day's rent for which I hold a receipt." The terms of the contract agreed upon there proved by the witness, G. T. Saunders, who testified that the apartment was rented unfurnished for a period of eight weeks at a price of $60.00 after full discussion of the terms and a definite explanation as to the ownership of the furniture. (R. 206.)

The petitioner testified that Mrs. C. L. Fugate, who was not at her office on Sunday night, would have to decide on Monday whether or not she could let this respondent rent the pieces of furniture which the tenant who vacated that day had been renting.

The respondent did not keep the terms of the contract he signed, thereby making trespass on anybody else's part impossible. Had the petitioner herself moved into the apartment on February 11, 1946 she could not have been a trespasser. Had the petitioner repaired the plumbing, replastered or repainted the walls on February 11, 1946 (it must be explained right here that labor was very difficult to get and keep and jobs had to be arranged ahead of time for a certain day and hour), she could not have been called a trespasser. Only the respondent himself who had breached his contract was the trespasser. The respondent did not give a three-day notice as to whether or not he cared to rent the premises for an additional period nor did he pay or offer to pay the rent for the unfurnished apartment for any period after February 10, 1946. He did not return his key as he agreed, nor has he returned the key to this day.

He could have paid $60.00 for another eight-week period or $30.00 for a four-week period for the unfurnished apartment and rented a few pieces of furniture from one of several firms or individuals of Columbia, South Carolina at a nominal price such as $10.00-$12.00 per month (of course he could not have gotten a $125.00) mirror or a

$189.50 couch, etc., such as he had), thereby saving $15.00-$20.00 monthly on his expenses. He could have remained in the unfurnished apartment until this day but he chose to "cook up" a damage suit.

The contractual rights which protects the petitioner—even if she had committed the act of removing the furniture and there is no evidence, direct or indirect to that effect—is as follows: AM JUR Vol. 32, p. 778, pp. 918-919, "Since a tenant is under duty, it being a covenant expressed or implied in all leases, to deliver up the premises to the landlord on the termination of a lease, the tenant can hold over rightfully only pursuant to a valid agreement with the landlord. Holding over by the tenant without such agreement of the landlord puts the tenant in the position of being in wrongful possession against the landlord.

"It is optional with a landlord to treat a tenant wrongfully holding over as a trespasser or to waive the wrong of holding over and treat him as a tenant."

According to the respondent's own testimony he was holding over 10 days—February 10-February 21, 1946. Nobody knows how long he actually held over after the 10-day period mentioned in the testimony as he has not until this day returned the key to the apartment. (If this isn't trespassing—what is it?)

The party who actually moved the furniture was not a trespasser against this respondent whose contract had ended and who was not in the apartment at the time of the removal of the furniture. It is only proper to explain that during the period of the alleged trespass a large percentage of the tenants left the doors of the apartments locked and slipped away with the keys, many of this group leaving personal possessions and all of them owing rent as this respondent did. Removing the furniture and placing personal belongings on the floor was merely a routine matter

and most certainly could not be called a trespass. Many tenants leave personal belongings, some of which are called for and many of which lie in storage for years (five years ago one tenant left a trunkful of personal belongings that have never been called for). The procedure of transferring various pieces of furniture from apartments where leases had expired to other rooms and apartments where new contracts were being made was absolutely necessary, as otherwise the incoming parties who rented certain furnishings would be in position to sue the owner of the furniture if the goods were not delivered as per contract.

Point III

The State Court erred in upholding the Court on the ground that the petitioner was connected with the alleged trespass on entirely circumstantial evidence.

The State Court committed error in ruling that while the evidence connecting the appellant with the trespass was entirely circumstantial—it was the duty of the trial Judge to submit the case to the jury. It was impossible to connect this petitioner by circumstantial or any other kind of evidence with a trespass that didn't happen. The issue was a breached contract and somebody moving some furniture from somewhere. The respondent was holding over after his contract was ended and so the conjecture must have been that this petitioner would react as many landlords or perhaps the Court itself would react under like circumstances and scheme to get rid of a contract breacher by devious means. Now that is going a bit too far in the realm of conjecture for the Court to create a reaction for the injured party in order that she might commit the alleged trespass purely for the satisfaction of the Court's mind. In other words it is grossly unfair for the Court in total absence of evidence to twist that situation into circumstantial evidence to fit the desired reaction.

There could be no circumstances upon which to base conjecture other than the several meetings of the respondent with the petitioner, which meetings are as follows: (1) Sunday night December 16, 1945, when the respondent rented the unfurnished apartment (R. 118-121); (2) Several nights later when the respondent asked the petitioner to favor him by issuing a duplicate receipt without any explanation except that he had lost his and wanted to make sure of his rent date. The petitioner gladly gave him a duplicate receipt without question using exactly the same form used today on printed cards (R. 72); (3) Sunday night, February 10, 1946, when respondent asked to borrow petitioner's key because his was lost, at which time petitioner told him she had no key but would on Monday morning get a locksmith to make one to open the apartment. (R. 77-78, 134.) (Petitioner was very busy in looking after a frail little mother and doing all of the renting and janitor work and did not have time to see the tenants enough to recognize them, much less look after their keys for them); and (4) February 19, 1946, when he came and reported that the furniture was missing. (R. 64.) There was nothing that petitioner could do about that, as her own contract with him was unaffected. Of course he had breached his contract and was getting his rent free, but this petitioner was accustomed to being the loser. That is why today she can't pay the expenses that she does owe, can't pay this judgment gotten by the respondent which she doesn't owe, and can't hire a lawyer to fight for this writ of certiorari. At each one of these meetings petitioner was considerate and accommodating. Therefore, there were no circumstancs governing these meetings which might by the remotest conjecture be considered the basis for the evidence the Court calls "entirely circumstantial".

In upholding the trial Judge in sending the case to the jury, the Court ignored the rule necessary to sustain

a judgment for trespass ("but while the plaintiff need not prove his case beyond a reasonable doubt, evidence affording only a basis for mere speculation as to the cause of plaintiff's injuries is wholly insufficient as a basis upon which to rest a verdict for damages." 52 AM JUR 892) and made the case a question of fact for the jury when it should have been a question of law for the Court.

Point IV

The State Court erred in upholding the judgment of the Lower Court on the ground that a reasonable inference could be drawn that the appellant instigated the trespass.

The State Court committed error in ruling that a reasonable inference could be drawn that the appellant instigated the trespass for the simple reason that the alleged trespass was not really a trespass but only an act growing out of a breached contract by a party who testified that she committed the act which the respondent called trespass for her own stated reasons and without consulting the petitioner. And here again the State Court had to delve into the world of conjecture in order to create a motive for the petitioner so that she could instigate the alleged trespass. The evidence certainly does not establish any such motive. According to the testimony the petitioner had treated this respondent only with kindness on and the three times since the Sunday night he rented the apartment (once to ask for a duplicate receipt, next to borrow a key, and finally to tell about some furniture being missing). (R. 38, 51, 59.) There was absolutely no unpleasantness between petitioner and respondent, as petitioner did not know what was lurking behind the request for a duplicate receipt and a key.

A misstatement by respondent which attempted to create a motive for the petitioner to instigate the alleged

trespass was that petitioner locked him out (R. 51). What the testimony actually proved was that the petitioner had no key to the apartment, could not get a locksmith on Sunday night to accommodate the tenant, but promised to get a locksmith to make a key on Monday morning (R. 134-137). After all, a tenant should be able to take care of his own key.

Had there been any motive on the part of the petitioner to have the apartment vacated, she could have given a three-day Magistrate's Notice on the 11th of February and the apartment would have been vacated long before February 19th, the day some furniture was removed. The Court should not have accepted the motive created by the misstatement as a basis for a presumption that petitioner wanted the apartment vacated.

There could not have been any motive on the part of the petitioner to get more rent for the apartment, "black market rent," as the respondent falsely expressed it, as not one dollar more than $30.00 per month could have been charged for the unfurnished apartment no matter who rented it. (This fact was brought out by the Rent Director whose testimony proved that respondent was paying OPA price for the unfurnished apartment (R. 26). The return of respondent's rent in the amount of $125.00 prior to this case was occasioned by the fact that petitioner had been seriously ill with a major operation and it was thought best not to jeopardize her life or health with any matter that could possibly be disposed of without a lot of worry (R. 130, 143). Incidentally, too, the attorney was running for public office and preferred not to try any cases at that time for fear of losing votes). Since there was no unpleasantness between owner and tenant, since a three-day Magistrate's Notice would have vacated the apartment, and since no more than $30.00 per month could have been charged to

any tenant for the use of the unfurnished apartment, petitioner could have had absolutely no motive in using any kind of scheme to oust respondent. And besides that, the party who owned the furniture testified that she removed it without the knowledge of the petitioner. The Court, when holding that a reasonable inference should be drawn that petitioner instigated the trespass, completely disregarded the testimony.

Point V

The State Court erred in upholding the judgment of the lower Court on the ground that a reasonable reference could be drawn that the appellant cooperated in the alleged trespass.

The State Court committed an error in holding that a reasonable inference could be drawn that the petitioner cooperated in the alleged trespass because there was a complete absence of motive on the part of the petitioner to remove the furniture, no motive at all upon which to base the presumption that the petitioner took part in the act of removing the furniture. In addition to that, there was no evidence whatever to connect her with the alleged trespass. No one saw her near the spot; no one saw her removing the furniture; testimony proved that she had no key to the apartment (R. 134-136); petitioner testified that she did not commit any trespass which statement was uncontradicted by the respondent (R. 138); and most important of all, the owner of the furniture testified that she did move the furniture according to her contract (R. 166). It was necessary for the State Court to disregard completely all these facts and testimony in order to hold that a reasonable inference could be drawn that the appellant cooperated in trespass.

Point VI

The State Court held that an agent of the petitioner

committeed the alleged trespass. There is not one word in the testimony that points to the fact that petitioner had any agent at all. If the State Court based such presumption upon the statement that the owner of the furniture purchased some goods from the petitioner, then she too is being denied the equal protection of the laws guaranteed every citizen by the Fourteenth Amendment to the United States Constitution.

She also purchased goods from Sears, Roebuck and Co., Columbia Salvage Co., and many others (R. 197-205). She went into business in the hope of being able to make a living but abnormal conditions created by the war or something (high-priced and inefficient labor, expensive drayage, sabotage of furniture, exorbitant prices of repairing and reconditioning furniture, non-payment of rental obligations due to schemes of crooked tenants promoted, aided and abetted by certain employees of the Rent Control Office with most unhealthy motives) forced her like thousands of others out of business (R. 195, 165, 205).

All goods that would be accepted were returned to the firms from which they were purchased and most of the balance of the high-priced junk was placed in a warehouse, where some of it still sits — a complete loss (R. 195). She used expensive furniture (quite different from average, rental furniture) to suit the tastes of the tenants at that time.

If the fact that the owner of the furniture was not in her office on Sunday night — when the respondent practically forced himself into the apartment in question — is indicative of agency, then most of the people throughout the country, who are in business for themselves, must be termed agents because of absence from their business offices on Sunday evenings. Only five minutes more and respondent would not have found petitioner there either.

The owner of the furniture testified that she was responsible for the removal of some furniture (Testimony proved that the necessary, unobtainable items such as frigidaire and gas stove, were still there) from the apartment in question where the contract had ended, to several other apartments where new contracts were being made (R. 59, 159).

Since there is no testimony to even suggest agency, the Court, according to the opinion given, based such agency idea upon the presumption that the petitioner cooperated in the act of removing the furniture, which presumption was based on the presumption that the petitioner instigated the act, which presumption was based on the presumption that the petitioner had the particular motive created by the Court for committing such act. This case built purely upon presumptions, for which there is no supporting evidence, leaves the Court in much the same position as Jack (in "Jack and the Beanstalk") when he was stranded at the top of the beanstalk, the only difference being that the Court had the power to remain safely at the top of the beanstalk or anywhere while the petitioner was sent dashing to destruction. Now if this Honorable Court could only see fit to get rid of this ladder of presumption and reverse the State Court's decision, then this much-abused petitioner could wake up and rejoice that it was only a bad dream, just as Jack did.

Point VII

The State Court erred in submitting the case to the jury as a result of "carefully weighing all the evidence," as no amount of weighing could possibly reveal even a scintilla of evidence to connect the petitioner with the alleged trespass.

This is the evidence weighed by the State Court. Peti-

tioner saw respondent four times — rented him an unfurnished apartment, gave him a duplicate receipt, told him she had no key other than the one he held, and stated to him that she assumed the owner of the furniture came and got the missing furniture (R. 65, 72, 75-80, 118-120). Respondent and his wife, both interested witnesses, attempted to prove the alleged trespass. Respondent stated that on February 19, 1946 the furniture in the apartment he had rented for eight weeks (December 16, 1945- February 10, 1946) was missing from the apartment about 7:00 in the evening and that his personal belongings were placed in the middle of the floor (R. 59). No eye witness saw petitioner remove any furniture, and the testimony proved that she had no key to the apartment (R. 135-137).

The testimony not only proved that the respondent in accordance with the contract could have lived in that unfurnished apartment as long as he paid $60.00 for eight weeks or $30.00 for four weeks and kept the other terms of the contract but also revealed the fact that respondent did live there as long as he pleased without paying one penny for rent after February 10, 1946. He was not asked to leave, nor was he given a three-day Magistrate's Notice (R. 141-142, 119-121).

Not satisfied with the extra free rent, he received $125.00 (due to petitioner's serious physical condition), a refund of more than twice the amount of rent he had paid (R. 148-150). Still not satisfied with his extra free rent, the eight-week period free rent, and the gift of $125.00, he demanded $5,000.00 damages because some pieces of furniture rented from someone else but placed in the unfurnished apartment had been reclaimed by that party exactly according to contract. As far as the petitioner was concerned, he remained in the unfurnished apartment as long as he liked (according to his own testimony he was

there February 21, eleven days after the period contracted for) without paying his rent as per agreement and left (nobody knows just when) of his own free will and accord.

All the respondent had to do to keep the particular pieces of furniture he wanted was to let the owner of the furniture know that he wanted them and to pay for an additional period (R. 166). This he would not do. Mrs. Fugate, a disinterested witness, testified that she moved some of the furniture from this apartment to several other apartments where it was needed to take care of new contracts, her lease with him having expired.

Had this respondent not been imbued with deep-laid plans against the petitioner, he would have remained in the apartment and rented the furniture needed from one of several firms or individuals in the city of Columbia who could have supplied the ordinary, cheap rental furniture at the price of $10.00 or $15.00 at a saving for himself of $15.00 or more monthly.

Had the State Court carefully weighed the evidence, the respondent's testimony, designed to create a guilty atmosphere for petitioner, would have been clearly seen. The Court would have thoroughly understood such rash statements against petitioner as: locking a man out of the house (when in truth the man had his own key and was of age to open a door); refusing to put the amount of rent on a receipt (when respondent had already signed a written contract for the amount and did not request that the amount be put on receipt — the printed or written form of which gave only the apartment number and the date of the last day paid for unless the amount was requested); throwing a man out on the street (when the only thing that happened was the removal of some pieces of furniture by the owner of same according to her contract).

Had the State Court carefully weighed the evidence as

claimed, the Court would have recognized the fact that both respondent and his wife, the only interested witnesses as to the alleged trespass, did not hesitate to misrepresent the truth. In regard to getting a duplicate receipt, respondent excused himself for telling an untruth by saying he was instructed to do so by the Rent Office (R. 73). The Rent Director denied any such instructions. Again, when respondent asked petitioner to give him an extra key, he said one time that his key was inside the room and another time that he had lost it. He also claimed that the request for a key was made February 9, the same day he claimed he shook money in petitioner's face and the day after he had filed suit against her in County Court when in reality the date was February 10, Sunday night (R. 78). It was by reason of its being Sunday that no key could be made for respondent. Respondent's wife struggled to create the impression that she was with him on the night he rented the apartment by saying "It was explained that it was a furnished apartment." (R. 97)

Both respondent and his wife gave conflicting testimony about the day the furniture was removed. Respondent said that it was a couple of days after petitioner checked a piece of furniture in his apartment from the doorway. Respondent's wife stated that both acts happened on the same day. (R. 58, 101)

The evidence in the case so indisputably proved that the petitioner committed no trespass and that the owner of the furniture removed it according to contractural agreement that it is indeed difficult to understand how the State Court could have possibly sent the case to the jury as a result of weighing the evidence.

I hereby submit that the ruling of the State Court is erroneous and should be reversed.

Respectfully submitted,

ANNIE MARY TIMMONS,
Petitioner.